In the Supreme Court

OF THE

United States

OCTOBER TERM, 1941

No. 934

NELSON TAYLOR, J. R. MASON, GILBERT MOODY, and N. O. BOWMAN,
Petitioners,

vs.

PROVIDENT IRRIGATION DISTRICT
(an Irrigation District),
Respondent.

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit and to BRIEF IN SUPPORT THEREOF.

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To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

STATEMENT OF THE CASE.

Counsel has, in his petition for a writ of certiorari, made a very cursory statement of the facts involved in

this case and in several instances has distorted the facts appearing in the record.

The facts are comprehensively reviewed by the opinion of the Circuit Court of Appeals, Ninth Circuit, reported in 123 Fed. (2d) 965, at pages 965 and 966, and we respectfully refer this Honorable Court thereto.

The petition purports on pages 8 and 9 thereof to present six questions for determination, but in the brief in support thereof three propositions are argued which we will answer in the order followed:

I.

ANSWER TO FIRST PROPOSITION: "THE PLAN IS UNFAIR AND DISCRIMINATORY AS TO PETITIONER NELSON TAYLOR".

The contention of petitioner Nelson Taylor is based upon the erroneous premise that by reason of the presentation and endorsement of his bonds after they matured in accordance with Section 52 of the California Irrigation District Act, he was entitled to a preference on the ground that under "California law, bond obligations must only be paid in the order of their presentation for payment. (R. 180.) (Cal. Stat. 1931, p. 172; *Bates v. McHenry,* 123 Cal. App. 81, *Provident Land Corp. v. Zumwalt,* 12 Cal. (2d) 365.)" (Petitioner's Brief, pp. 5-7; 14.)

This contention was answered by the Circuit Court of Appeals as follows (123 Fed. (2d) 967):

> "* * * The Bankruptcy Act places on a basis of equality all existing creditors whose claims are payable from the same source, and in the event of bankruptcy the bonds of the district of whatever maturity, and whether they have been registered or not, are on a parity. West Coast Life Ins. Co. v. Merced Irr. Dist., 9 Cir., 114 F. (2d) 654, Moody v. James Irrig. Dist., 9 Cir., 114 F. 2d 685."

In the cases cited by the Circuit Court of Appeals the question was comprehensively considered and both of the cases cited by petitioner, together with a number of other cases, clearly distinguished. In the *Moody* case, supra (114 Fed. (2d) 685, 688), the Court stated:

> "* * * we decided in the Merced case that due bond interest and principal does not become preferred claims when presented and registered as provided by Section 52 of the California Irrigation District Act. Had the District proceeded in its course as a solvent entity the holders of overdue bonds and interest would have been paid in accordance with Section 61a of the California Irrigation District Act. But it did not and could not have so proceeded, and it resorted to the Bankruptcy law for relief."

Certiorari was denied by this Court in both the *West Coast Life Ins. Co.* case and the *Moody* case, supra (61 S. Ct. 441, rehearing denied, 61 S. Ct. 620, 61 S. Ct. 721.)

II.

ANSWER TO SECOND PROPOSITION: "THE HIGHEST COURT OF CALIFORNIA HAS ESTABLISHED THE FACTS AND LAW OF THIS PROCEEDING AND THE BANKRUPTCY COURT WAS BOUND TO FOLLOW SUCH DECISIONS, BUT DID NOT".

The Supreme Court of California has not had anything to do with the "facts and law of this proceeding" and the contention of counsel that the lands of the District "remain in trust" and that "the land 'can never be permanently released from the obligation of the bonds until they are paid'" is fully answered by the Circuit Court of Appeals and supported by the following cases:

West Coast Life Ins. Co. v. Merced Irr. Dist., supra (114 Fed. (2d) 654, 675-676);

Jordan v. Palo Verde Irr. Dist., 114 Fed. (2d) 691, 694, 696, certiorari denied, 61 S. Ct. 712;

Bekins v. Lindsay-Strathmore Irr. Dist., 114 Fed. (2d) 680, 683, 684.

III.

ANSWER TO THIRD PROPOSITION: "THE PLAN IS UNFAIR AND DISCRIMINATORY TO PETITIONERS".

(A) Assets Of The District, etc.:

This contention of petitioners is answered by the Circuit Court of Appeals as follows (123 Fed. (2d) 967):

> "It is claimed that the record discloses no valuation data sufficient to enable the trial court to reach a conclusion as to the fairness of the plan. There was, it is said, no appraisal of the assets

of the district, no balance sheet or statement of assets or income. But remembering that the proceeding has to do, not with a private bankrupt, but with an agency of government, we think the showing was adequate and sufficiently complete. The assets to which creditors might resort consisted in this instance of such cash as the district had and its interest in the lands acquired; and of these and their worth the court was fully advised."

(B) Excluded Lands:

On page 18 of petitioners' brief, the wholly unsupported statement is made that nearly "10,000 acres of land, owned by the district, and held for the benefit of the bondholders, and worth between $50,000 and $100,000, is to be excluded from the district without a cent compensation to bondholders".

This contention of petitioners is answered by the Circuit Court of Appeals as follows (123 Fed. (2d) 967):

> "* * * Appellants suggest that these lands might be sold to the Biological Survey at prices ranging from $7 to $15 per acre. The evidence is that they are worth no more than $5 an acre with no tax obligation against them; but even if they could be sold for three times as much the sum realized would be far short of the amount necessary to discharge existing liens in favor of taxing bodies other than the district itself."

The debt burden of Reclamation District No. 2047 and the delinquent county taxes against the excluded lands amount to a total of $339,972.04. (R. 100.)

(C) Fiscal Agent's Fee:

No objection to the amount paid to the fiscal agent of the District was made in the District Court and the evidence fully supports its reasonableness. The services rendered extended over a period in excess of four years and the fiscal agent paid all of his own costs and expenses from the amount paid him. (R. 112-113.)

(D) Operation Of District Lands By District:

On page 18 to 21 of petitioners' brief, it is suggested that the District should have continued to lease its lands as a landlord, keeping it off tax rolls and paying no part of governmental expenses in lieu of refinancing.

This contention of counsel is fully answered by the Circuit Court of Appeals as follows (123 Fed. (2d) 967, 968):

> "* * * Appellants argue * * * that the district might continue to lease these lands, and in effect operate them for the benefit of the bondholders. They would be tax free, it is said, and altogether a rosy picture is conjured up. However, serious flaws in this program at once suggest themselves. Prior to the reorganization the district was not sole owner of the lands; title to them was jointly in the district, Reclamation District No. 2047 and the state. We take it that all of these titles are of equal rank, La Mesa, etc. Irr. Dist. v. Hornbeck, 216 Cal. 730, 17 P. 2d 143, but under section 3773 of the Political Code of California the state would seem to have prior right to possession and the sole power to lease and to receive the rents and profits. Counsel for appellants tell us that

in many districts similarly situated it is the practice of the district to take all the rentals; but as a permanent program, considered with all its implications, we are not impressed with counsel's alternative to composition."

CONCLUSION.

In conclusion we submit that the petition for a writ of certiorari should be denied as there are no important legal questions presented which have not heretofore been firmly established and the decision of the Circuit Court of Appeals is in accord with the law as heretofore announced by this and other Federal and State Courts upon the subject in question.

Dated, Willows, California,
March 9, 1942.

Respectfully submitted,
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ELMER LAINE,
Counsel for Respondent.